

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL LEE, on behalf of himself
and all others similarly situated,

Plaintiff,

- vs -

CANANDAIGUA NATIONAL BANK & TRUST,

Defendant.

STIPULATION AND ORDER

Civil Action No. 20-cv-6332-EAW

WHEREAS, Plaintiff commenced this putative class action on May 21, 2020 (the “Federal Action”); and

WHEREAS, Plaintiff filed an Amended Class Action Complaint on August 13, 2020; and

WHEREAS, Defendant moved to dismiss the Amended Complaint; and

WHEREAS, at oral argument on Defendant’s motion to dismiss on April 21, 2021, the Court *sua sponte* raised the issue of abstention from exercising jurisdiction over the claims asserted in this lawsuit pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d)(2); and

WHEREAS, the Court entered a Text Order on April 23, 2021 directing the parties to submit supplemental briefing addressing the issue the Court raised; and

WHEREAS, to avoid incurring further expense and delay, and to act to conserve the resources of the Court, Plaintiff desires to discontinue the Federal Action in contemplation of filing a lawsuit in New York State Supreme Court asserting the same claims that were asserted in the Amended Complaint on behalf of the same putative classes.

NOW, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys of record for all of the parties to the above-captioned action:

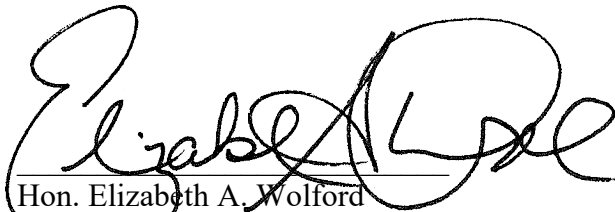
1. The Federal Action is hereby withdrawn, discontinued and dismissed, without prejudice, and with each party to bear its own respective fees and costs.

2. If Plaintiff commences a new action in New York State Court within thirty (30) days of the dismissal of the Federal Action, the statute of limitations for the claims of the Plaintiff and the members of the putative classes that were asserted in the Amended Complaint in the Federal Action shall be deemed to have been tolled for the period of time that such claims were pending in the Federal Action (from the date the Federal Action was commenced or the claim was asserted, as may be applicable, until the date the Federal Action is discontinued).

3. Other than as expressly stated herein, this Stipulation is without prejudice, waiver or limitation to the claims, defenses or arguments of any party.

<p>DATE: May 17, 2021</p> <p>KALIEL PLLC</p> <p>By: <u>/s/ Sophia Gold</u> Sophia Goren Gold, Esq. (<i>pro hac vice</i>) Jeffrey D. Kaliel, Esq. 1875 Connecticut Ave., 10th Floor Washington, DC 20009 Tel.: (202) 350-4783 sgold@kalielllc.com jkaliel@kalielllc.com</p> <p>George V Granade, II, Esq. Michael Robert Reese, Esq. Reese LLP 8484 Wilshire Boulevard, Suite 515 Los Angeles, CA 90211 Tel.: (212) 643-0500 ggranade@reesellp.com mreese@reesellp.com</p> <p>Taras Kick, Esq. (<i>pro hac vice</i>) The Kick Law Firm, APC 815 Moraga Drive Los Angeles, CA 90049 Tel.: (310) 395-2988 taras@kicklawfirm.com</p> <p><i>Attorneys for Plaintiff</i></p>	<p>DATE: May 17, 2021</p> <p>NIXON PEABODY LLP</p> <p>By: <u>/s/ Carolyn Nussbaum</u> Carolyn G. Nussbaum, Esq. Eric M Ferrante, Esq. 1300 Clinton Square Rochester, NY 14604 Tel.: (585) 263-1000 cnussbaum@nixonpeabody.com eferrante@nixonpeabody.com</p> <p><i>Attorneys for Defendant</i></p>
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SO ORDERED:



Hon. Elizabeth A. Wolford
Dated: May 17, 2021